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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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<b>2001 Assembly Bill 843</b>	<b>Assembly Amendment 1 and Assembly Amendment 10</b>
Memo published: March 1, 2002      Contact: Robert J. Conlin, Senior Staff Attorney (266-2298)	

2001 Assembly Bill 843 makes numerous changes to the law relating to campaign financing. Assembly Amendment 1, including Assembly Amendment 1 and Assembly Amendment 2 to Assembly Amendment 1, and Assembly Amendment 10 make several modifications to the bill, as described below.

**ASSEMBLY AMENDMENT 1 (INCLUDING ASSEMBLY AMENDMENTS 1 AND 2 TO ASSEMBLY AMENDMENT 1)**

**Issue Ads**

Under the bill, communications made with “independent expenditures” that exceed a certain amount or value must be separately reported to the Elections Board. Generally, this reporting requirement applies to a communication that refers to a clearly identified candidate that is made within 30 days of a primary or 60 days of an election. Based on such reports, the Elections Board may allow an affected candidate to exceed the applicable disbursement limit and collect contributions in excess of the applicable limit. However, under the bill, such reportable “independent expenditures” do not include disbursements which are separately reportable under current law. Generally, the effect of this provision is to require “issue ads” to be specially reported but not ads which specifically advocate the election or defeat of a candidate. *Assembly Amendment 1* provides that any independent expenditure for a communication that refers to a clearly identified candidate that is made within 30 days of a primary or 60 days of an election would need to be specially reported under the bill even if it is otherwise reportable. Thus, any communication that refers to a clearly identified candidate made within 30 days of a primary or 60 days of an election would need to be specially reported if it exceeds a certain amount.

### **Independent Expenditure Report Form**

As noted above, the bill requires certain independent expenditures to be reported to the Elections Board. ***Assembly Amendment 1*** makes it clear that the report is to be made on a form prescribed by the Elections Board for this specific purpose.

### **Challenging Report**

Under the bill, the Elections Board is specifically authorized to obtain a copy of a communication made with an independent expenditure to determine if it was made against a candidate or for his or her opponent in order to release a candidate from the disbursement limits and increasing his or her contribution limits if the person who makes the independent expenditure does not indicate whether it was made for or against a candidate, if the report identifying the independent expenditure reasonably appears to be incorrect, or if any candidate in the race files a statement alleging that the information in the report is incorrect. ***Assembly Amendment 1*** deletes the specific language authorizing a candidate to challenge a statement filed with the board.

### **Filing of Candidate Reports**

Under the bill, a candidate at a primary or other election is required to file weekly preprimary or preelection reports once he or she has received contributions or other income exceeding 20% of the disbursement level for that office. ***Assembly Amendment 1*** modifies this requirement so that it is triggered no earlier than the 15th day before a primary election or the 15th day before the date on which a primary would be held if a primary was required. In addition, the reports would not need to commence until a candidate has accumulated contributions or other income in a total amount exceeding 75% of the disbursement level for that office. ***Assembly Amendment 2 to Assembly Amendment 1*** makes a technical correction to this provision to effectuate its intent.

### **Committee Contribution Limits**

The bill provides different individual contribution limits depending upon whether the receiving candidate has voluntarily agreed to abide by the applicable disbursement limit for the office he or she seeks. Under the bill, a person contributing to a candidate who has agreed to abide by the disbursement limit, may contribute twice as much as he or she could to a candidate who has not voluntarily agreed to abide by the disbursement limit. However, under the bill, no similar treatment is made with respect to contributions from political committees. ***Assembly Amendment 1*** provides that the amount that a particular committee, other than a political party committee, may contribute to a candidate who has not voluntarily agreed to abide by the disbursement limits is 1/2 of the amount that such a committee may contribute to a candidate who does voluntarily agree to abide by the disbursement limit. If the amendment is adopted, the bill would provide the following limits applicable to committee contributions for the following offices:

	<i>Candidates Subject to Disbursement Limit</i>	<i>Candidates Not Subject to Disbursement Limit</i>
Governor	43,500	21,750
Lieutenant	12,000	6,000
Attorney General	22,000	11,000
Secretary of State	8,650	4,325
Treasurer	8,650	4,325
Superintendent	12,000	6,000
Justice	12,000	6,000
Senator	1,500	750
Representative	750	375

### **News Organizations and Corporations**

Generally, under current law, a corporation, cooperative or voluntary association, other than a political party or campaign committee, may make disbursements for the purpose of communicating only with its members, shareholders or subscribers to the exclusion of all other persons, with respect to endorsements of candidates, positions on a referendum or explanation of its views or interests, without reporting such activity under the campaign finance law. Similarly, the campaign finance law does not restrict fair coverage of bona fide news stories, interviews with candidates and other politically active individuals, editorial conduct or endorsement. Those activities do not need to be reported as contributions or disbursements under the campaign finance laws. *Assembly Amendment 1* clarifies that such activities by corporations, voluntary associations or cooperatives and news organizations that might be considered a communication made with “independent expenditures” under the bill would not need to be reported for campaign finance purposes.

### **Increased Limits Based on Independent Expenditures**

Under the bill, if it is determined that a candidate who has agreed to comply with the disbursement limits has an independent expenditure made against him or her or for his or her opponent, the Elections Board must issue a determination to allow the candidate to make additional disbursements exceeding the disbursement limit and collect additional contributions. *Assembly Amendment 1* would provide that *any candidate* who has such a communication made with an independent expenditure made against him or her or for his or her opponent, must be released from the disbursement limits and allowed to collect additional contributions regardless of whether he or she has voluntarily agreed to the disbursement limits.

### **Severability**

Generally, under current law, unless otherwise specifically required, if a court finds a provision of a law unconstitutional, only that provision is void and the remaining provisions are left intact to the

extent they can be given effect without the offending provision. *Assembly Amendment 1* creates a specific nonseverability provision for certain provisions of the bill. Generally, under the amendment, if any aspect of the bill relating to independent expenditures, the two-tiered contribution limits and any adjustments made to the contribution limits in response to independent expenditures is found unconstitutional, all of those provisions are void in their entirety. *Assembly Amendment 1 to Assembly Amendment 1* creates an additional nonseverability provision applicable to the provisions of the bill that double individual and committee contribution limits for candidates that receive a grant or voluntarily adhere to the applicable disbursement limits. Under the amendment, if any portion of those provisions are unconstitutional, all of those provisions are void in their entirety.

### **Technical Changes**

Assembly Amendment 1 also makes a number of technical and clarifying changes related to cross-references and other revisions to accurately effectuate the intent of the bill.

### **ASSEMBLY AMENDMENT 10**

Generally, under the bill, if an applicant for a campaign grant has a balance in his or her campaign account exceeding 50% of the disbursement level applicable to that office, the candidate is eligible for a grant of up to only 50% of the grant amount normally payable. *Assembly Amendment 10* changes this provision to provide that if an applicant for a grant has a balance in his or her campaign account exceeding 100% of the applicable disbursement level, the candidate is not eligible for any grant. The amendment also requires any candidate applying for a grant to file a special financial report to provide the Elections Board with sufficient information to determine the candidate's eligibility for a grant under this provision.

On February 26, 2002, the Assembly adopted Assembly Amendment 1, including Assembly Amendments 1 and 2 to Assembly Amendment 1, by voice vote. It also adopted Assembly Amendment 10 on the same date on a vote of Ayes, 99; Noes, 0. The bill, as amended, was passed by the Assembly on February 26, 2002 on a vote of Ayes, 87; Noes, 12.

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